# Minnesota Wetland Conservation Act



Discussion of Issues Related to the March 15, 2016 Report to the Legislature

# Agenda

- 1. Welcome and introductions.
- 2. Meeting purpose/ground rules.
- 3. In-Lieu Fee Wetland Replacement.
- 4. Wetland Replacement Siting (including High Priority Area implementation).
- 5. Northeast Actions Eligible for Credit.
- Discussion.

# **Purpose of Meeting**

#### To discuss issues related to the March 2016 report

- 1) Present information and ideas.
- 2) Obtain constructive feedback and alternative ideas.

# **Purpose of Meeting**

- > The purpose of the meeting is NOT to:
  - X Re-hash or argue about statute changes or the rationale for them.
  - X Present rule language or final proposals.
  - X Discuss issues unrelated to the March report.

Note: Some background and understanding of previous discussions will be helpful.

#### **Ground Rules**

#### <u>Please hold comments until time for discussior</u>

- ✓ Quick clarifying questions OK if time permits.
- ✓ Raise your hand.
- ✓ We may cut off questions/discussion to stay on track.
- ✓ You can provide comments in writing and/or there will be further opportunities to participate/comment.
- Respect differing opinions all perspectives are legitimate. In the end, the WCA policy goal is to improve outcomes for the public as a whole.

#### Outline

- · More detail on ILF and its CPF
- Mitigation objectives
- Tools to achieve objectives
- Matching tools with objectives

Remember: purpose of ILF is improved mitigation <u>targeting</u> and <u>outcomes</u>.



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#### What is a Compensation Planning Framework (CPF)?

The targeting plan for mitigation using a watershed approach.



#### What is required for a CPF?

Analysis and/or description of:

- Threats to (aquatic) resources (in the service area)
- Historic losses
- Current conditions
- Resource goals
- Prioritization strategy
- Long term protection, mgmt., reporting, monitoring etc.

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#### How do these factors influence targeting?

Each watershed has its own current stressors, its own potential future threats and its own set of unique characteristics.

#### So.....

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A mitigation action that is valuable in one watershed may not be sustainable and/or valuable in another watershed.



# **Developing a CPF**

Not only do we need to identify current and potential stressors in a watershed, we also need to:

- Decide what scale of watershed to consider, and
- what <u>functional goals</u> are <u>important</u> and practicable to achieve.



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# **Developing a CPF**

CPF for MN will likely be developed at several scales.





# Determine and Collect Fees Advance credit requests Project review and selection Credit certification requests Project Maintenance

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#### **ILF Roles & Responsibilities ILF Component** Responsibility BWSR working with **Develop CPF and** Instrument contractor Determine, collect, **BWSR** or contractor manage fees Advance credit requests **BWSR** Project selection and review Land/Easement BWSR &/or contractors Acquisition Project Design Contractor refers to nonprofit, private consultant, private banker BWSR &/or contractors Project Implementation

# **ILF Sponsor - BWSR**

#### Why BWSR?

- Member of IRT, cooperative efforts with Corps.
- · LGU network for finding and selecting projects.
- More experience restoring wetlands in MN (maybe the country) than anyone else (over 250,000 acres since 1987).
- Easement acquisition process in place.
- Cooperative projects with Road Program.



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# Also, a working understanding of the regulatory process is necessary

#### **Conservation Programs**

Can be flexible to attract more landowners.

Program approval only needed

Decisions based on overall program goals

Consequences if fail to meet goals?

#### **Regulatory Program**

Must adhere to regulatory rules and requirements

Multiple agency approvals needed

Decisions based on credit yield

Failure has legal consequences

#### **ILF Sponsor - BWSR**

#### Why BWSR?

 More opportunity to partner with LGUs, state agencies and conservation organizations to complete projects on lands with a variety of ownership (private, local, state and federal lands).



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# **Hypothetical Example**



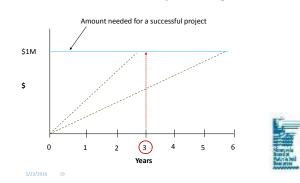
# **ILF Sponsor - BWSR**

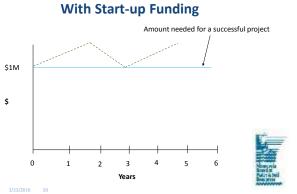
# Why BWSR?

- Ability for statewide implementation (multiple service areas, cross service areas).
- Startup funds to reduce program default risk.



# **Without Start-up Funding**





# How will the ILF operate without adversely affecting private banking?



#### **ILF & Private Banking**

Establish a preference for bank credits over ILF in rule.



# ILF & Private Banking

- Prioritize difficult to replace wetland functions (white cedar, floodplains, new NE credit actions, etc.).
- Focus on larger projects not typically pursued by private bankers.
- Partner with LGUs, conservation programs/entities and even private bankers.



# **Examples of Partnering** from the Road Program

Contracts with 4 private bankers/landowners to produce credits for the Road Program at an agreed-upon price per credit in 2013.

Currently pursuing two projects that involve a 4-way partnership with the County, watershed district, landowner and BWSR Road Program to produce credits.



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#### **ILF & Private Banking**

- The ILF would provide another mitigation option (if preferred bank credits are not available) to help keep replacement of wetland functions in the watershed of impact if private bank credits are not available.
- Our intent is to have the Compensation Planning Framework developed for the ILF be used for private banking as well.

# **Mitigation Objectives and Tools**



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# The ILF is one tool to achieve these overall mitigation objectives:

- 1. Keep as much mitigation <u>in the watershed</u> of impact as practicable.
- <u>Prioritize mitigation</u> in areas where it is most effective at restoring and protecting important watershed functions (targeting).
- Use functional surrogates to maximize <u>replacement of important lost functions</u> in watersheds (when not using a planning framework/watershed approach).
- 4. When mitigation <u>leaves the watershed</u>, prioritize where it goes based on <u>statewide priorities</u> (i.e. HPAs).
- 5. Encourage mitigation projects that  $\underline{\text{meet local watershed}}$   $\underline{\text{needs}}$  and objectives.

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#### **Matching Tools and Objectives**

- 1. Keep as much mitigation in the watershed of impact as practicable.
  - ILF as another option in the watershed.
  - New NE actions as an option in NE watersheds.
  - Higher replacement ratios for going out of service area.

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#### **Tools and Objectives**

- 2. Prioritize mitigation in areas where it is most effective at restoring and protecting important watershed functions (targeting).
  - Compensation Planning Framework of ILF.
  - Local high priority areas.
  - Use in-kind definition to incent priority projects.



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#### **Tools and Objectives**

- Use functional surrogates to maximize replacement of important lost functions in watersheds. (when not using a watershed approach)
  - In-kind replacement definition to better match functional loss and replacement.
  - Service area boundaries



#### **Tools and Objectives**

- When mitigation leaves the watershed, prioritize where it goes based on statewide priorities.
  - Higher replacement ratios for lower priority areas.
  - Designation of High Priority Areas (HPA).
  - ILF and its compensation planning framework.



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#### **Tools and Objectives**

- 5. Encourage mitigation projects that meet local needs and objectives.
  - Designation of local priority areas through local planning processes.
  - ILF compensation planning framework.



#### **Summary**

- The ILF is a tool that we can use to help meet many of our mitigation objectives.
- However, other tools (replacement ratios, service areas, HPAs, etc.) are equally as important for meeting mitigation objectives.
- The details will be proposed and laid out as we seek input from stakeholders and consult with Corps and other regulatory agencies throughout the rulemaking process.



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# **Wetland Replacement Siting**

Goal: Improve the targeting and outcomes of mitigation.

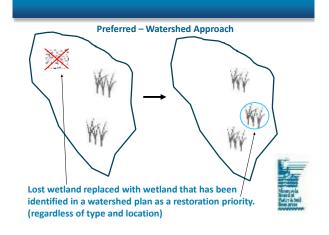
#### What We Will Cover:

- Current Situation
- Challenges
- Options

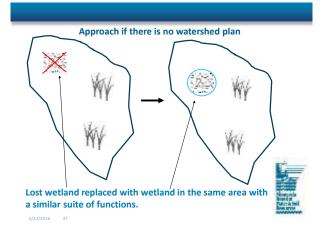
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# **Wetland Replacement Siting and Ratios**

In the absence of a planning framework utilizing a watershed approach we use:

Siting criteria (Where)
 Replacement ratios (How Much)
 In-kind definition (What Functions)

To direct wetland replacement.



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# **Current Situation**

To figure out where you can replace wetland impacts and how much replacement you need, you need to know:

- 1. minor watershed?
- 2. major watershed?
- 3. bank service area?
- 4. <50%, 50-80%, or >80% county?
- 5. bank credits or project specific?
- 6. out-of-kind or in-kind?

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# Minor Watersheds (~5600 in MN)



# **81 Major Watersheds**



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### 10 Bank Service Areas





# **Pre-Settlement Wetland Areas (PSA)**





# Existing Siting Criteria

Priority Siting Criteria for Replacement:

- 1. Onsite or minor watershed
- 2. Major watershed
- 3. Same Bank Service Area or County
- 4. Another Bank Service Area

#### Cannot:

Impact wetland in <50 County and replace in 50-80 or >80 County.

Impact wetland in 50-80 County and replace in >80.





#### **Current Rule for >80 Counties and Ag Impacts**

Location of Replacement	Type of Replacement	Replacement Ratio
Same BSA	Banking	1:1
Different BSA	Banking	1.5:1
Same major watershed*	Project-specific, in-kind	1:1
Same major watershed	Project-specific, out of kind	1.5:1
Different major watershed	Project-specific	1.5:1

<sup>\*</sup> For mining projects, the entirety of BSA 1 and 2 is considered the "same major watershed".





Location of Replacement	Type of Replacement	Replacement Ratio
Same BSA	Banking	2:1
Different BSA	Banking	2.5:1
Same major watershed	Project-specific, in-kind	2:1
Same major watershed	Project-specific, out of kind	2.5:1
Different major watershed	Project-specific	2.5:1

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# **Summary of Existing Siting Rules**

- Replacement ratio does not increase until you leave the bank service area (bank credits) or the major watershed (project-specific) of impact. (except mining impacts in BSA 1 and 2)
- If you justify going out of BSA, you can go anywhere, ratio is the same regardless.
- In-kind is irrelevant if using bank credits.
- In-kind is determined by plant community, not function.

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# Challenges

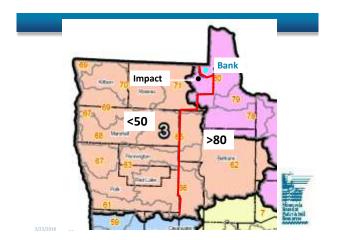
BSAs follow watershed boundaries, pre-settlement areas (>80, 50-80, <50) follow county boundaries.

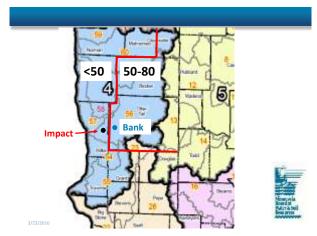










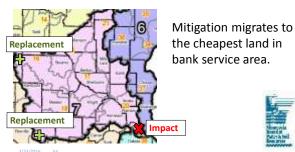


# Challenges

Ecological Zones don't follow watershed boundaries or presettlement areas.



# **Challenges**



# Challenges



Mitigation migrates to the cheapest land when it leaves the BSA.

In this example, mitigation crosses watershed and ecological section boundaries.

#### Challenges with current in-kind definition

- Not applicable to banking.
- Plant communities change over time.
- Plant community is poor indicator of function.

For example, a wet meadow in the floodplain functions differently than a wet meadow in the prairie pot hole region.





### **Challenges**

Current siting criteria do not allow <u>incentives to utilize</u> <u>a watershed approach</u> for replacement siting.

Incentives for replacement siting focus on <u>proximity to impact</u> and <u>plant community type</u>, not function.

<u>Land values</u> are the primary driver for replacement siting, not functional gain or goal-oriented watershed improvements.

Mining impacts in BSA 1 and 2 are considered to be in the same major watershed.

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#### Questions to Answer in Rulemaking

- 1. What is *close* when it comes to providing mitigation in relation to an impact?
- 2. What functional surrogate should be used to better match functional loss to gain (i.e. how to define *in-kind*)?
- 3. At what point are functional benefits to the watershed just as important as closeness?



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#### **Questions to Answer**

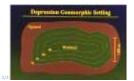
- 4. What size and shape should our service areas be?
- 5. How can we build in incentives to site replacement in conformance with local and statewide priorities (based on a watershed approach)?



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- 1. What is close when it comes to providing mitigation in relation to an impact?
- Minor watersheds (too many)
- Major watersheds (too many?)
- BSAs (pre-settlement area issue, not entirely watershed-based, does not take into account ecological aspects, relatively large)
- Ecological sections (not entirely watershed based)
- Some combination?
- How do HPAs fit in?

- 2. What functional surrogate should be used to better match functional loss to gain (i.e. how to define in-kind)?
  - Currently no surrogate except for project-specific.
  - Plant community is poor indicator of function.
  - Current science points to landscape position and hydrology sources as the best indicator of wetland functions (HGM approach).





- 3. At what point is in-kind just as important as closeness?
- Are replacement ratios lower when replacement is in-kind compared to out-ofkind?
- If so, can in-kind be used to encourage needed wetland types in certain watersheds and/or high priority areas?

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# 4. What size and shape should our service areas be?

- Service areas can be based in part on ecology, physiography and other geographicbased features.
- Economic viability can be a consideration in designating service areas.



Initial BWSR thoughts related to the issues discussed



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#### Thoughts/recommendations

Preference order: banking, ILF, project-specific. Treat project-specific and banking the same.

- Same application procedures
- Require conservation easement
- · Same fees as banking

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- · Same performance criteria
- Same evaluation/crediting process
- · Only difference is financial assurance.



#### Some initial thoughts/recommendations

- Look at changing service area boundaries to include ecological aspects.
- Redefine "in-kind" using HGM approach.
- Lower replacement ratios for in-kind or in service area as compared to out-of-kind or out of service area.



#### Some initial thoughts/recommendations

- Provide incentive to go to HPA with replacement ratios.
- Allow replacement in defined service areas regardless of county pre-settlement zone designation, but adhere to the concept of not allowing impacts in wetland poor areas of the state to be replaced in wetland rich areas of the state.

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# The statutes direct us to use ratios for targeting

- Target HPAs
- Target priority site/projects in service areas via watershed plan (watershed approach, CPF)



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# Might look something like this:

Replacement Siting	Ratio (A=lowest)
Same service area, priority project/credits per an approved watershed plan	А
Same service area, in-kind	А
Same service area, out-of-kind	В
Different service area, HPA, priority project/credits per an approved watershed plan	В
Different service area, HPA	С
Different service area	D, E, F

#### Or this:

Replacement Siting	Ratio (A=lowest)
Same service area, priority project/credits per an approved watershed plan	A
Same service area, in-kind	В
Same service area, out-of-kind	С
Different service area, HPA, priority project/credits per an approved watershed plan	D
Different service area, HPA	D
Different service area	E, F, G

#### Siting of Wetland Mitigation in NE MN

Recommendation to Implement HPAs

#### Replacement Wetland Siting Criteria:

- 1) On-site or in the same minor watershed as the impact.
- 2) In the same major watershed as the impact.
- 3) In the same bank service area as the impact.
- 4) In another bank service area.
  - In an area of the state that has been designated as high priority for wetland restoration.\*

\*Adding a new step to the siting criteria (in statute) was discussed, but was <u>not</u> included in the final 2015 language.

#### Other Thoughts/Recommendations

- Fees for long-term maintenance.
- New mitigation application procedures to match up with Federal requirements.



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# Northeast Minnesota Alternative Actions Eligible for Credit Stream Restoration Riparian Preservation Other Opportunities for Aquatic Resource Functional Gains

#### Siting of Wetland Mitigation in NE MN: Issues, Recommendations and Alternatives (2014)

The report recognized that these actions may not yield a <u>net</u> <u>gain</u> in wetland acres, but <u>will provide</u> alternatives that <u>target specific aquatic resource functions to the benefit</u> of the watershed.

Impact Site (Wetland Fill)

Alt. Mitigation Action (Stream Rest./Protection.)

Wildlife & Water Quality, other functions

Hydrology Stabilization, Wildlife & Water Quality

Water Quality

Net Benefit to Watershed.

# **Statute Changes**

#### 2015 Statute Revisions

- in a greater than 80% area, restoration and protection of streams and riparian buffers that are important to the functions and sustainability of aquatic resources.
- In greater than 80% areas preservation of wetlands, riparian buffers, and watershed areas essential to maintaining important functions and sustainability of aquatic resources in the watershed that are protected by a permanent conservation easement.....

# **Prior Stakeholder Discussion**

- Stream Restoration
  - -Source/Effects of Degradation
  - -Problem/Cause/Fix
  - -Meander Belt Concept
- Protest soldlings
- Buffer Restoration
  - -Source/Effects of Degradation
  - -Goals
  - -Set width or adaptive strategy
  - -Crediting options

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# **Stream Restoration Examples**



# **Stream Restoration Example**

#### The Details:

- Multi-agency project in Beltrami County
- Mud River Dam Removal and Channel Restoration Project
- Major Issue: Sediment accumulation behind dam

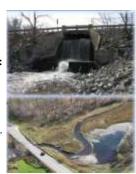




# Mud River Dam Removal and Channel Restoration Project

- Dam was built in 1917
- Original purpose provide source water for walleye hatchery
- Problem sedimentation
- Reason for removal of dam: Sediment accumulation caused temperature and water quality problems for raising walleye fingerlings
- **Project Costs:** Engineering \$35,000, plus \$40,644 for Construction
- Project Partners: Red Lake DNR, MNDNR, MnDOT, EPA, NRCS

Source: Minn. DNR



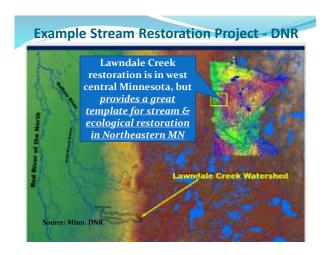
# Mud River Dam Removal and Channel Restoration Project

#### **Ecological Benefits:**

- Reconnected Mud River to Lower Red lake
- Provides <u>stream habitat</u>, <u>fish passage and</u> <u>spawning habitat</u>
- Improved <u>safety</u>
- Improved water quality.



Source: Minn. DNR

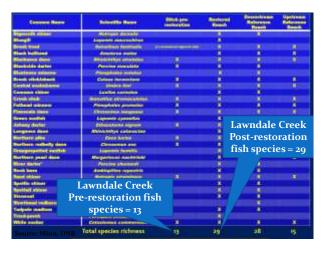








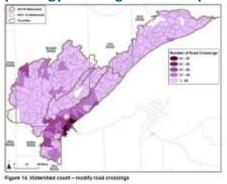


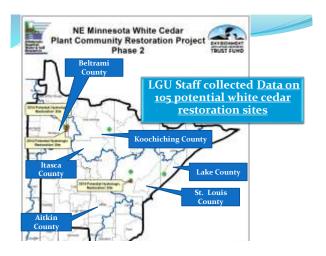


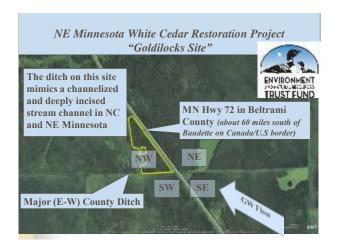




# Road Crossings – May impede Natural Hydrology with Significant Impacts









# **Stream Restoration Crediting**

- Cannot directly measure functional lift (lack of precise tools/methods).
- Need to use surrogates of function.
- For other credit actions, surrogates are area-based.

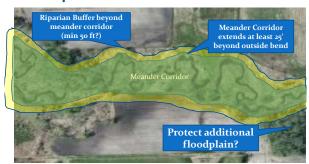
## **Stream Restoration Crediting**

Important zones that were identified for streams are:

- Meander corridor
- Floodplain
- Riparian buffer

These areas can reasonably be identified on most streams.

# **Example – Meander Corridor & Buffer**



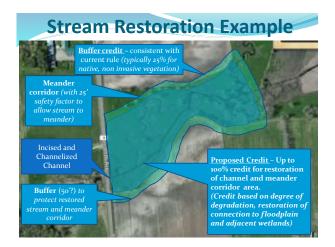
# **Stream Restoration Crediting**

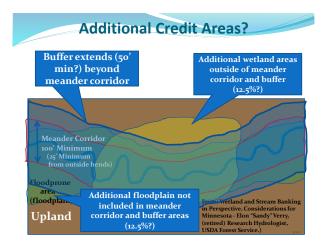
- Restoration activities in the <u>meander corridor</u> will have the most direct/immediate impact on functions (sediment removal, dam removal, re-meandering, etc.)
- Restoration actions in the floodplain will in general have a less direct/immediate impact on functions (reconnecting floodplain to channel, removing sediment, etc.)
- Restoration actions <u>outside the floodplain</u> will primarily serve as riparian buffer to protect the channel and floodplain from sources of degradation.



# **Stream Credit Example**

Area	Activity	Credit
Meander Corridor (5 acres)	Remove dam, remove sediment, re-establish channel	100%
Floodplain (10 acres)	Reconnect stream with its floodplain, re-establish some floodplain areas	50%
Riparian Buffer (7 acres)	Establish native vegetation, long-term protection	25%





# Other Considerations for Restoration Actions for Streams

- 1. Need to be <u>sustainable actions</u>, not temporary fixes.
  - No beaver dam removals, fish structures, etc.
- 2. Need to be focus on "<u>natural</u>" restoration actions.
  - No big rip rap or hard armor projects. Some may be necessary for certain projects, but if they are needed extensively, suggests that the sources of impairment have not been addressed/mitigated.

# Prior Stakeholder Discussion

#### **Preservation Actions**

- · Riparian Buffers
- Priority Resource Types
- Essential
   Watershed Areas

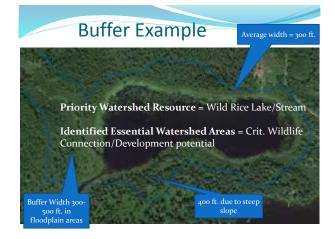
Preservation of Intact Riparian Buffer

Bank/Channel Stability
Floodplain Connection
Wildlife Habitat
Maintain Water Quality



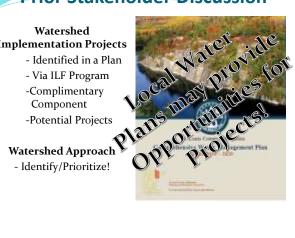
# Riparian Buffer Preservation

- Set minimum width but adapt buffer to specific site conditions.
- Must be sustainable.
- Crediting based on current process.
  - Probability of degradation
  - Functional Benefit for preservation
  - More for higher quality/higher priority
  - Consider Buffer Legislation (less credit?)



# **Prior Stakeholder Discussion**

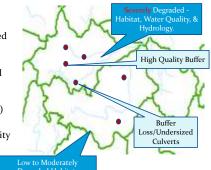
# **Implementation Projects**



# A Watershed Approach

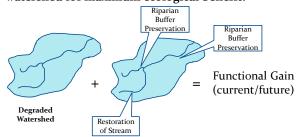
#### **The Basics**

- Identify watershed disturbance levels/types.
- Identify potential project sites.
- Site Assessment (functional gains)
- Prioritize sites based on the ability to restore, sustainability, current/future impacts, etc.



# Result...

Identification of projects that will compensate or correct for the disturbance/stress types within the watershed for maximum ecological benefit!



# Other Considerations

- Identification of watershed needs.
- Actively involves staff at all levels.
- Results in a Comprehensive potential project list.
- Use by private entities, partnerships, or ILF program.



#### **Study Example**

EPA Study Identified Potential Projects & Modeled opportunities at the Watershed Scale.

# Report Approach

Inventory of site specific activities.

- Watershed plans, reports, & staff interviews.
- Assigned comparable wetland functional yield.

GIS based Landscape Level Modeling

- Used existing data sets.
- Resulted in an inventory & ranking of potential project opportunity at HUC 12 watershed scale.

Data sets were paired to produce final suitability maps by watershed.

# Site Specific Inventory

Report
Listed
Numerous
Potential
Projects and
Assigned a
Comparable
Wetland
Functional
Gain





# Modeling for Identification of Opportunity

Permanent Protection of land (preservation)

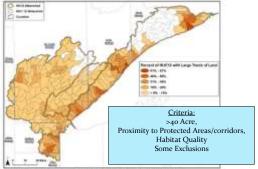
Restoration of buffers, corridors and shoreline

Stream Restoration

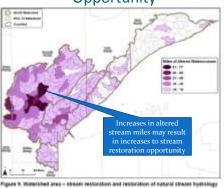
Hydrologic Condition Improvement

Peatland Hydrology Restoration

# **Ex. Potential Preservation Opportunity**

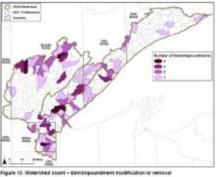


# Ex. Potential Stream Restoration Opportunity



# **Dam Restoration Opportunity**

**Ex. Natural Hydrologic Improvement** 



# Watershed Ranking System

Watersheds were ranked based on the "need" for preservation or restoration

Preservation Need= presence of high quality resources and potential for stressors.

- High Quality Resources = Trout Waters/Wild Rice/SNA etc.
- Stressor Surrogate Used= road density & mining proximity

Restoration Need= abundance or specific level of disturbance

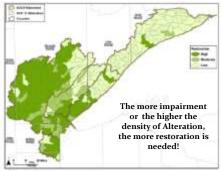
- · List of Impaired Waters (biota, turbidity, eutrophication)
- · Altered watercourses

# Watershed Preservation Rank



Figure 21. Watershed preservation conting

# Watershed Restoration Rank



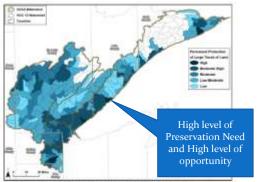
#### Figure 22. Waterwhed metabation ranking

# Next Stop....

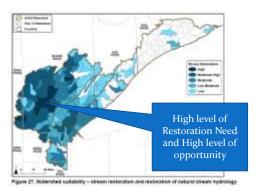
Combine Analysis of Opportunity with Needs Analysis

Provides a Suitability Ranking for Alternative Action type by watershed.

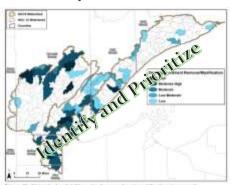
# Suitability of Preservation



# **Suitability for Stream Restoration**



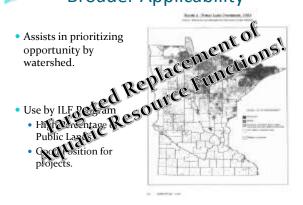
# **Suitability for Dam Restoration**



# **Broader Applicability**

- Similar methods can be applied to other watersheds/BSA's.
- Identification of Potential Alternative Mitigation Projects throughout NE MN.

# **Broader Applicability**



Questions and Feedback